



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 19, 1996

Mr. David B. Hodgins
Bracewell & Patterson, L.L.P.
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR96-1482

Dear Mr. Hodgins:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100547.

The Houston Independent School District (the "school district") received a request for "an unaltered [copy] of any and all billings submitted to HISD or paid by HISD in regard to my children" You assert that the requested records are excepted from required public disclosure based on sections 552.101, 552.103, and 552.107(1) of the Government Code.¹

Section 552.103 of the Government Code protects from required public disclosure information that relates to pending or reasonably anticipated litigation. *See* Open Records Decision No. 551 (1991). You assert that the requested records relate to pending litigation. We agree. *See* Open Records Letter No. 96-0859 (1996). However, the requestor here is the parent of the students to whom the records pertain. The requested fee bills are education records subject to the Family Educational and Privacy Act, ("FERPA"), title 20 of the United States Code, section 1232g. Section 552.103 may not be applied to deny a parent his or her right to education records under FERPA. *See* Open Records Decision No. 431 (1985) at 3. Consequently, the school district may not withhold the requested fee bills from the requestor pursuant to section 552.103 of the Government Code.

¹This office has stated that an educational agency or institution may withhold education records from public disclosure under sections 552.026 and 552.114 of the Government Code without the necessity of requesting a decision from this office. *See* Open Records Decision No. 634 (1995). Of course, in this case, you do not raise sections 552.026 or 552.114.

You raise sections 552.101 and 552.107(1). You inform us that the school district produced the fee bills to the opposing party in the pending litigation, but with redactions of "information protected by the attorney-client privilege or other legal privileges."² Section 552.107(1) encompasses the attorney-client privilege. This exception states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5, 462 (1987) at 13-14.

Thus, this exception protects only the essence of the confidential relationship between attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 (1990) at 5. Consequently, a governmental body may not withhold fee bills in their entirety under this exception, but may withhold only information about the details of the substance of communications between the attorney and the client.

That section 552.107(1) protects only the details of the substance of attorney-client communications means that the exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). Consequently, if a governmental body seeks to withhold attorney fee bills under section 552.107(1), the governmental body must identify the portions of the bills that reveal client confidences or attorney advice. *See* Open Records Decision No. 589 (1991). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See id.*

²Although early open records decisions permitted governmental bodies to withhold from disclosure information within the attorney-client privilege pursuant to section 552.101, the privilege is specifically covered under section 552.107(1). Furthermore, this office has stated that discovery privileges are not covered under the predecessor provision of section 552.101. *See* Open Records Decision No. 575 (1990) at 2.

You submitted a representative sample of the billing records the school district seeks to withhold from required public disclosure. You say the highlighted portions of those records contain privileged information. We agree that the sample fee bill contains some privileged information and have marked those portions accordingly.³ Section 552.107(1) does not cover the remainder of the sample fee bill. We note that you did not identify the persons whose names appear on the bill. We were able to determine the position in the litigation of some of the named persons from the bill itself. The privilege does not apply to communications with parties whom we are unable to identify as either a client or an associated attorney on the case. We note that a communication with a hearing officer is not an attorney-client communication.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 100547

Enclosures: Marked documents

cc: Ms. Lisa K. Welch
9414 Meaux
Houston, Texas 77031-1726
(w/o enclosures)

³In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.